

The Senate Judiciary Committee offered the following substitute to SB 481:

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 3 of Chapter 12 of Title 16 and Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to offenses related to minors generally and inspection of public records, respectively, so as to restrict access to evidence of a violation of Code Sections 16-12-100, 16-12-100.1, and 16-12-100.2 involving sexual exploitation of children, electronically furnishing obscene material to minors, and computer or electronic pornography; to provide for controlled access to such evidence and certain other evidence in public inspections of evidence; to provide that it shall be unlawful for persons under certain circumstances to knowingly possess any visual medium which depicts a minor or any portion of a minor's body engaging in sexually explicit conduct to any other person; to prohibit public disclosure of certain evidence under limited circumstances; to provide for penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses related to minors generally, is amended by adding a new Code section to read as follows:

"16-12-100.4.

(a) As used in this Code section, the term:

(1) 'Minor' means any individual who is under 18 years of age.

(2) 'Possess' means and includes possessing, distributing, giving, exhibiting, and reproducing.

(3) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

(4) 'Visual medium' shall have the same meaning as set forth in Code Section 16-12-100.

(b) In addition to the prohibitions contained in Code Sections 16-12-100, 16-12-100.1, and 16-12-100.2, it shall be unlawful for any person to knowingly possess any visual medium

1 which depicts a minor or any portion of a minor's body engaging in sexually explicit
2 conduct to any other person.

3 (c) It shall be an affirmative defense to a charge of violating this Code section if:

4 (1) The defendant possesses such visual medium depiction for the purpose of prosecuting
5 or defending a party in a criminal action or representing a party in a civil action when
6 such visual medium depiction is necessary for the purpose of such case; or

7 (2) The defendant is a member of law enforcement and possesses such visual medium
8 depiction during the investigation of criminal offenses;

9 provided, however, that the affirmative defense provided in this subsection shall not apply
10 to providing to third parties or nonparties, other than to the court, jury, court personnel, the
11 State Board of Pardons and Paroles, or expert witnesses, access or possession of such
12 visual medium depiction.

13 (d) Any person who violates this Code section shall be guilty of a felony, punishable by
14 imprisonment for not less than one nor more than 20 years."

15 SECTION 2.

16 Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to
17 inspection of public records, is amended by revising Code Section 50-18-71.1, relating to the
18 approval of the judge required for inspection of trial exhibits, as follows:

19 "50-18-71.1.

20 (a) Notwithstanding any other provision of this article, an exhibit tendered to the court as
21 evidence in a criminal or civil trial shall not be open to public inspection without approval
22 of the judge assigned to the case or, if no judge has been assigned, approval of the chief
23 judge or, if no judge has been designated chief judge, approval of the judge most senior in
24 length of service on the court.

25 (b) Except as provided in subsection (d) of this Code section, in the event inspection is
26 not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an
27 exhibit shall, upon request, provide one or more of the following representations of the
28 exhibit:

29 (1) A photograph;

30 (2) A photocopy;

31 (3) A facsimile; or

32 (4) Another reproduction.

33 (c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply
34 to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing
35 a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost
36 of materials or supplies and a reasonable charge for time spent producing the photograph,

1 facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section
2 50-18-71.

3 (d) Any physical evidence that is evidence of a violation of Code Section 16-12-100,
4 16-12-100.1, or 16-12-100.2 or any visual image depicting a crime scene that is evidence
5 of a violation of Code Section 16-5-1 that is used as an exhibit in a criminal or civil trial
6 shall not be open to public inspection except as provided in subsection (a) of this Code
7 section. If the judge approves inspection of such evidence, the judge shall designate, in
8 writing, the location where such evidence may be inspected, which location shall be in a
9 facility owned or operated by an agency of state or local government. If the judge permits
10 inspection, such property or material shall not be photographed, copied, or reproduced by
11 any means. Any person who violates the provisions of this subsection shall be guilty of a
12 felony and, upon conviction thereof, shall be punished by imprisonment for not less than
13 five nor more than 20 years and by a fine of not more than \$100,000.00, or both."

14 SECTION 3.

15 Said article is further amended by revising subsection (a) of Code Section 50-18-72, relating
16 to when public disclosure is not required, by striking "or" at the end of paragraph (19), by
17 striking the period and inserting in its place "; or" at the end of paragraph (20), and by adding
18 a new paragraph to read as follows:

19 "(21) Notwithstanding the provisions of paragraph (4) of this subsection, any physical
20 evidence or investigatory materials that are evidence of an alleged violation of Code
21 Section 16-12-100, 16-12-100.1, or 16-12-100.2 or any visual image depicting a crime
22 scene that is evidence of a violation of Code Section 16-5-1, which are in the possession,
23 custody, or control of law enforcement, prosecution, or regulatory agencies."

24 SECTION 4.

25 All laws and parts of laws in conflict with this Act are repealed.